

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROBERT J. ESQUIVEL,

Plaintiff,

VS.

LOGAN EASTBURN, DPS, TROOPER
#14720; RYAN BIBBY, DPS, TROOPER
#14593; NICHOLAS WINGATE, DPS,
TROOPER #13157; AND TEXAS
HIGHWAY PATROL DEPARTMENT OF
PUBLIC SAFETY,

Defendants.

SA-20-CV-00377-OLG

ORDER

This order concerns Plaintiff's Pro Se Motion for Permission to Proceed In Forma Pauperis on Appeal [#74], which was referred to the undersigned for disposition pursuant to Western District of Texas Local Rule CV-72 and Appendix C on November 9, 2022. The undersigned has authority to enter this order pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons set forth below, the Court will grant the motion.

The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a). In connection with requests to proceed *in forma pauperis* on appeal, the motion must state “the nature of the action, defense or appeal and affiant’s belief that [he] is entitled to redress.” 28 U.S.C. § 1915(a); see also Fed. R. App. P. 24(a). Section 1915 further states that the district court may deny leave to proceed *in forma pauperis* if an appeal “is not taken in good faith” (i.e., if the appeal fails to present a non-frivolous issue). 28 U.S.C. § 1915(a)(3). An appeal is taken

in good faith if it presents an arguable issue on the merits and therefore is not frivolous. *Crawford v. Child Protective Servs.*, 834 Fed. App'x 100, 100 (5th Cir. 2021) (per curiam).

Plaintiff was previously granted leave to proceed *in forma pauperis* in this case. Accordingly, Rule 24(a)(3) of the Federal Rules of Appellate Procedure also applies, which provides that “[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless . . . the district court . . . certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding.” Fed. R. App. P. 24(a)(3).

Because Plaintiff was previously afforded *in forma pauperis* status, he is not required to seek authorization of the Court before proceeding *in forma pauperis* on appeal. However, because Plaintiff filed a motion, the Court has considered it. Plaintiff has provided the Court with a financial affidavit indicating that although he is employed, his monthly expenses exceed his income. (Mtn. [#74].) Additionally, Plaintiff’s Notice of Appeal apprises the Court of the orders and issues he is seeking to appeal, specifically the Court’s three dispositive orders on Defendants’ motions to dismiss and motions for summary judgment. (Report & Rec. [#22], Order Adopting Report & Rec. [#27]; Report & Rec. [#35], Order Adopting Report & Rec. [#44]; Report & Rec. [#63], Order Adopting Report & Rec. [#72].)

The Court finds that Plaintiff does not have the financial means to pay the filing fee on appeal. Additionally, Plaintiff has informed the Court of the subject of his appeal. Finally, the Court finds that Plaintiff’s appeal is taken in good faith. The Court will therefore grant the motion.

IT IS HEREBY ORDERED that Plaintiff's Application to Proceed In Forma Pauperis on Appeal [#12] is **GRANTED**.

SIGNED this 18th day of November, 2022.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE